

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KEVIN SHERLOCK, et al.,)	Case No. 5:04 CV 0704
)	
Plaintiffs,)	Judge James S. Gwin
)	
vs.)	MEMORANDUM OPINION
)	(Resolving Docket No. 23)
CITY OF AKRON, et al.,)	
)	
Defendants.)	Magistrate Judge James S.Gallas
)	

Defendants have moved for sanction against plaintiffs' attorney, Edward P. Markovich, pursuant to Rule 37(d) due to his dilatory appearance at the depositions scheduled for October 5, 2004. Defendants submitted the affidavit of Frank H. Scialdone at the motion hearing evidencing a total request of attorney fees and expenses in the amount of \$997.00 (Exhibit A). Credible evidence establishes that the depositions occurred at the time and place agreed upon by Attorneys Markovich and Scialdone and notice was issued electronically on September 29, 2004. Mr. Markovich mistakenly appeared with his clients at 9:00 on October 4, 2005 but then failed to appear until 12:30 p.m. the following day, though depositions of Mary Sherlock and Kevin Sherlock were scheduled for 9:00 a.m. and 11:00 a.m., respectively. Plaintiffs themselves, however, appeared for deposition at approximately 10:30 on October 5, 2004. Mr. Markovich's representation that he informed Mr. Scialdone in advance that he had a damages hearing before Judge Williams on October 5 is refuted by the record prepared on October 5, 2005. (See Exhibit

3, pg. 7-8, Docket No. 23). The court finds that the damages requested for the sanction are excessive and will hereby enter judgment in the amount of \$750.00.

IT IS SO ORDERED.

s/James S. Gallas
United States Magistrate Judge

Dated: April 26, 2005